

Mary C. Geddes
Assistant Federal Defenders
FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF ALASKA
601 West Fifth Avenue, Suite 800
Anchorage, Alaska 99501
(907) 646-3400

Attorney for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHNNY LEE NAPIER,

Defendant.

Case No. 4:04-cr-0033-JWS

**MOTION FOR CLARIFICATION
OF COURT'S ORDER AT
DOCKET 57**

Filed on Shortened Time

Johnny Napier's case was remanded to this court for re-sentencing with respect to two issues: whether a mental health evaluation should be ordered as a special condition of supervised release and whether the plea agreement authorized restitution for (dismissed) Counts II and III. In an order at docket 57, on October 24, this court had set the date for re-sentencing as Thursday, January 4, 2006. The parties are required to file their sentencing memoranda and request for an evidentiary hearing no later than December 28, 2006.

On November 11, Mr. Napier filed a motion at docket 61 which asked the court to utilize existing court records to determine the plea agreement controversy. In its response, the government agreed the issue could be settled without an evidentiary hearing. However, the motion has not yet been ruled on by this court. For that reason, Mr. Napier respectfully seeks clarification as to whether the court intends to rule on his motion in advance of the re-sentencing.

Should the court decide the question presented in advance, but against Mr. Napier, Mr. Napier intends to subpoena a number of witnesses. If the court decides the question presented in advance, but in Mr. Napier's favor, there is no need for testimony as the order of restitution with respect to the count of conviction is not controverted.

DATED this 18th day of December 2006.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF ALASKA

/s/ Mary C. Geddes
Alaska Bar No. 8511157
Assistant Federal Defender
601 West Fifth Avenue, Suite 800
Anchorage, AK 99501
Ph: (907) 646-3400
Fax: (907) 646-3480
mary_geddes@fd.org

Certification:

I certify that on December 18, 2006,
a copy of the ***Motion for Clarification
of Court's Order at Docket 57 (filed
on Shortened Time)*** was served
electronically on:

Stephen Cooper, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
101 12th Avenue, Room 310, #2
Fairbanks, AK 99701

/s/ Mary Geddes